
ENVIRONMENTAL Fact Sheet



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New Hampshire's Brownfields Covenant Program

New Hampshire RSA 147-F, established a program to encourage the voluntary cleanup and redevelopment of contaminated properties, commonly called "brownfields." Brownfields are typically properties that have been abandoned or underutilized due to environmental contamination. Historically, prospective purchasers, financial institutions and municipalities have avoided involvement with these properties due to actual or potential liability for existing environmental contamination, typically caused by former site owners or operators. These properties, when left unaddressed, contribute to the urban blight created by abandoned and contaminated mill and industrial properties. As a direct consequence, the unnecessary development of pristine "greenfields," such as farms and forest lands, has occurred.

The objective of New Hampshire's Brownfields Covenant Program is to provide incentives in the form of liability protections for the investigation, cleanup and redevelopment of contaminated properties by persons who did not cause or contribute to the contamination. This is accomplished under a process by which an eligible person can obtain a "Covenant Not to Sue" from the N.H. Department of Justice (DOJ) and a "Certificate of Completion" from the N.H. Department of Environmental Services (DES) when site investigations and remedial actions are performed in accordance with DES cleanup requirements. For most sites, this is likely to involve legal and technical matters that will require the assistance of both legal counsel with expertise in environmental law and an environmental consultant.

WHY PARTICIPATE IN THE BROWNFIELDS COVENANT PROGRAM?

RSA 147-F provides comprehensive liability protection to eligible persons who voluntarily assume responsibility for the cleanup of contaminated properties. Specific liability protections include:

- Site investigation and pre-remedial activities conducted at the property during participation in the program do not trigger liability for remediation of preexisting contamination.
- An eligible person is not liable for the remediation of additional contamination or increased environmental harm caused by site investigation or pre-remedial activities, unless attributable to negligence or reckless conduct by the eligible person.
- If the eligible person cannot complete the site cleanup, the "Covenant Not to Sue" provides protection from liability as long as the site is stabilized to the satisfaction of DES and the site is not left in worse condition than it was before the cleanup was started.
- The "Covenant Not to Sue" provides liability protections for contamination addressed by an approved remedial action plan.
- The "Covenant Not to Sue" is transferable to other eligible persons. The conditions for transfer to new persons may vary depending on the status of site cleanup at the time of transfer.
- Both the "Covenant Not to Sue" and the "Certificate of Completion" are recorded in the county registry of deeds to permanently document the extent of these protections.

Note: The liability relief afforded by RSA 147-F extends only to liability or potential liability arising under state law. Federal liability relief is addressed through the Small Business Liability Relief and

Brownfields Revitalization Act and related policies issued by USEPA. If federal environmental liability issues are a concern for a specific brownfields site, DES will provide guidance and assistance upon request.

WHO IS ELIGIBLE?

Essentially, any person who did not cause or contribute to the contamination at the site and is either a prospective purchaser, a secured creditor or mortgage holder, or a municipality owed real estate taxes on the property. Current property owners may also be eligible if they can demonstrate they did not cause or contribute to the contamination.

WHAT PROPERTIES ARE ELIGIBLE?

Any property contaminated with hazardous waste, hazardous materials, or oil is eligible unless: 1) there is non-compliance with an environmental or corrective action order, and DES determines that the property will not be brought into substantial compliance as a result of participation in the Brownfields Program; or 2) the property is eligible for reimbursement from one of the state petroleum reimbursement funds (the Oil Discharge and Disposal Cleanup Fund, the Fuel Oil Discharge Cleanup Fund, or the Motor Oil Discharge Cleanup Fund) unless it receives substantially less than full reimbursement from these funds.

HOW TO APPLY FOR AN ELIGIBILITY DETERMINATION

To apply for an eligibility determination, the following information must be submitted to DES:

- A signed, complete application form available from DES.
- An environmental site assessment report. This may also include the submittal of an initial characterization report or site investigation and/or remedial action plan for sites that are further along in the investigation and cleanup process.
- A description of the proposed redevelopment and future use of the property.
- All supporting information required as part of the application package.
- A non-refundable application fee of \$750. State and local governments are exempt from paying the application fee.

After receipt of an application package, DES will review the application for completeness within 10 days. If the application package is complete, it will be forwarded to the DOJ for their review and approval. DES will send a written notice of eligibility determination to the applicant within 30 days of receiving a complete application.

AFTER ELIGIBILITY IS APPROVED, NOW WHAT?

The eligible person shall submit a site investigation work plan with an initial non-refundable program participation fee of \$4,500. State and local governments are exempt from paying the program participation fee. The total fees paid to the State will vary depending on the complexity of the site and the amount of DES time required to review and approve reports.

After a work plan is approved by DES, the eligible person will perform the necessary site investigations and data analysis. After review of the site investigation reports or at any other stage in this process, if DES concludes that cleanup goals have been fully attained, DES will issue a "Certificate of No Further Action" and close the site.

If the site investigation reports confirm site contamination, the eligible person must develop a remedial action plan (RAP), which describes the proposed actions to clean up the site, and submit the RAP to DES for approval. Upon RAP approval, DES will issue a "Notice of Approved Remedial Action Plan" and the DOJ will issue a "Covenant Not To Sue" to the eligible person, each of which may contain conditions relative to the required actions at the site. The "Notice of Approved RAP" must be recorded in the

registry of deeds by the eligible person. Upon completion of active site cleanup and DES approval of a completion report prepared by the eligible person, DES will issue a "Certificate of Completion." Depending on the site, the "Certificate of Completion" may include conditions such as activity and use restrictions, environmental monitoring requirements, and routine site maintenance requirements. When received by the eligible person, the "Certificate of Completion" and the related "Covenant Not To Sue" will also be recorded in the county registry of deeds.

This fact sheet is intended to highlight some of the key provisions and requirements of RSA 147-F and New Hampshire Code of Administrative Rules Env-Or 800, *Brownfields Program Under RSA 147-F*. If you have additional questions about the Brownfields Covenant Program after reviewing this information, please contact DES at (603) 271-2183.

Disclaimer: The Brownfields Covenant Program does not relieve persons from complying with applicable state, federal, and local statutes and rules. Information contained in the fact sheet is current as of September 2008. Statutory or regulatory changes that may occur after September 2008 may affect part or all of the information. If there are any questions concerning the status of the information, please contact DES at (603) 271-2183.